

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROMAN CHRISTOPHER MESINA,	:	
Petitioner,	:	
v.	:	Civil Action No. 05-400J
JOHN YOST, WARDEN, F.C.I.	:	
LORETTO,	:	
Respondent	:	

MEMORANDUM ORDER

Petitioner's third petition for a writ of habeas corpus under 28 U.S.C. § 2241 was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on November 23, 2005, docket no. 8, recommending that the petitioner's petition for a writ of habeas corpus be summarily denied because petitioner needed at the least to complete his direct appeal before filing a petition for a writ of habeas corpus under 28 U.S.C. § 2241. As in previous Report and Recommendations, the Magistrate Judge also observed that a petition was premature for the additional reason that Section 2255 would be available after direct review was completed.

The petitioner was notified that pursuant to 28 U.S.C. § 636(b)(1), he had ten days to serve and file written objections to the Report and Recommendation. The petitioner submitted objections, docket no. 8, including therein a memorandum opinion by the Eleventh Circuit, United States v. Mesina, No. 03-14839

(11th Cir. August 16, 2005), indicating that petitioner's conviction was affirmed after remand by the Supreme Court. Petitioner states in his brief, docket no. 3-1 at 2, however, that he has a petition for rehearing en banc pending before the Eleventh Circuit, and that if he is unsuccessful he plans to file a petition for writ of certiorari. Because petitioner's direct appeal is not over, his petition here remains clearly premature.

After de novo review of the record of this matter together with the Report and Recommendation, and the timely objections thereto, the following order is entered:

AND NOW, this 20<sup>th</sup> day of December, 2005, it is

ORDERED that the petitioner's petition for a writ of habeas corpus is denied. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Kim R. Gibson', written over a horizontal line.

KIM R. GIBSON,  
UNITED STATES DISTRICT JUDGE

cc:

Roman Christopher Mesina #74753-003  
F.C.I. Loretto  
P.O. Box 1000  
Loretto, PA 15940